



EDWARD J. KING
GOVERNOR

JOHN A. BEWICK
SECRETARY

The Commonwealth of Massachusetts

Executive Office of Environmental Affairs

100 Cambridge Street

Boston, Massachusetts 02202

62227

Signed	Bedford
Date	17.8.83
Other:	

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS

01

DRAFT ENVIRONMENTAL IMPACT REPORT

PROJECT NAME: Waterfront Park

PROJECT LOCATION: New Bedford

EOEA NUMBER: 4340

PROJECT PROPONENT: Department of Environmental
Quality Engineering - Waterways

DATE NOTICED IN MONITOR: December 28, 1982

The Secretary of Environmental Affairs herein issues a statement that the Draft Environmental Impact Report submitted on the above referenced project does not adequately and properly comply with Massachusetts General Laws, Chapter 30, Section 62-62H inclusive, and the regulations implementing MEPA.

The project which is the subject of the Draft EIR suffers from a fundamental ambivalence. It is clear from the outset that existing regulations prohibit the filling of saltmarsh to create recreational land. The Draft EIR fails to provide the information which would be necessary to warrant a variance from those regulations. Although a variance might perhaps be granted for the public purpose of disposal of contaminated materials, the Draft EIR says it is not the purpose of the EIR to address such issues.

Reviewing agencies and this office, however, had a different conception of the purpose of the EIR. It is clear from the Scope that the EIR was expected to address the contamination issue. If a proponent or its consultant take the position that the Scope misconstrues the purpose of a project, they should seek clarification or revision, rather than prepare a Draft which is not responsive to the Scope.

On balance, it appears that the proponent, before submitting any Revised Draft EIR, should await the issuance of the E.P.A. Draft Remedial Action Master Plan for the estuary and conduct further discussions with this office and the many other state, federal and local authorities having jurisdiction over issues related to the clean-up of New Bedford harbor.

The Draft EIR is inadequate because it:

1. Does not address the desirability of providing greater public access to a severely contaminated estuary.
2. Does not address the safety of recreational facilities on the PCB-contaminated dredge spoil disposal site.
3. Does not properly evaluate the on-site resources under Ch. 131, s. 40, nor does it document the public need and equal protection to the interests of the act required under Ch. 131, s. 40, for a variance if saltmarsh is to be destroyed.
4. Does not include a complete or adequate review of the PCB sampling and/or data reporting from previous analyses.
5. Implies that sediments containing over 50 ppm PCB's must be moved, yet does not address the proper disposal of the same, nor does it adequately discuss the issues concerning establishment of a low-level PCB (5-49 ppm) contaminated spoil disposal area.
6. Fails to indicate the flood plain storage to be displaced by the fill for a 100 year event, or what impact such a loss would have on the remaining estuary coast line flooding with a closed hurricane barrier.

I. Estuary Access

The DEIR is silent as to the desirability of encouraging greater public access to the PCB contaminated harbor. Many areas of the harbor contain sediments which are hazardous (over 50 ppm), and several state agencies, i.e., Public Health, DEQE Shellfish Sanitation, have tried to dissuade the public from use of the area (see DPH comments enclosed). The DEIR indicates that quahogs have 23 ppm PCBs and soft shell clams 20 ppm while the FDA limit is 5 ppm. Additionally, the DEIR indicates that the bottom feeding fish within the hurricane barrier exceed the 5 ppm FDA standards. Based on the above information and extensive data available from other sources, a decision should be made as to the appropriateness of facilitating public access prior to a cleanup or some other solution to the overall PCB problem in this harbor.

II. Public Use of PCB Contaminated Lands

All of the proposals to use the cove site as recreational land involve, to this point, covering PCB contaminated sediments to some degree with either ordinary borrow or a clay cap. No proposal to date suggests removing the top foot or so of sediments existing on site prior to filling the site for use.

The DEIR is conspicuously silent as to the desirability of locating recreational facilities over PCB contaminated sediments, whether hazardous (over 50 ppm) or contaminated special waste (5 to 49 ppm) levels. The basic question as to whether the public should use the site under any conditions must be answered; and if an affirmative answer is given to this, what type of barrier must be provided between the contaminated materials and the public. Again, the Department of Public Health and DEQE Solid Waste and Hazardous Waste personnel must be directly involved in developing an answer to this question.

III. The Wetland Resources - Ch. 131, s. 40

While the DEIR presents the Ch. 131, s. 40, process which would be necessary to pursue various alternatives of this project, the evaluation of the wetlands, using U.S. Fish and Wildlife Service and Corps of Engineers criteria, presents little analysis of the significance of the on-site resources. As correctly noted in the process description, destruction of saltmarsh is prohibited by the regulations. A variance is only available if equal protection to the interests of the Wetland Act can be provided. No such discussion was presented.

The equal protection of the interests of the act must be addressed in the impact report. The documentation and discussion presented should be detailed enough to become the proponent's presentation at the adjudicatory hearing required prior to the issuance of a variance. The policies for past projects in meeting this test are available from the Wetland office, CZM, or this office. The EIR process allows review of the proposed mitigation by all interested parties so that an appropriate plan may be available by the time of the adjudicatory process, thereby saving the time and effort of many at that time.

The statement on page 4-9 seems to indicate that some of the wetland resource areas on-site play a role in food chain production and provide wildlife habitat but does not evaluate their significance under Ch. 131, s. 40. Page 4-8 seems to indicate that the biota, because it is contaminated, has no significance and should be removed. A close look at the wetlands regulations suggests otherwise as contaminated shellfish beds do not lose their significance for several reasons: (1) food chain status, (2) source of future generations, (3) future food resource if the source of contamination can be removed.

The report correctly concludes that the 23.9 acre cove with 2.7 acres of intertidal saltmarsh should not, and probably could not, be approved for filling to create two boat launching ramps with associated parking and six acres of picnic grounds. So doing would destroy the 2.7 acre saltmarsh, a result prohibited by the coastal wetland regulations (Chap. 131, s. 40).

The report also shows on figure 2-4 that a proposed boat ramp may eventually be located on an abutting site, which requires no filling of cove or saltmarsh. The same figure shows that the sports stadium and its associated parking are located on the 14.1 acre upland and requiring no filling of the estuary. The greater part of the fill area is to be used as roads, a pond and miniature golf. Surely other appropriate sites are available for some of the proposed recreation facilities.

IV. PCB Sampling and Data Presentation

The DEIR (p. 3-4) indicates that test results are not consistent for the areas to be altered. As such, the adequacy of the current number of samples for distinguishing between hazardous (over 50 ppm PCBs) and special (5 to 49 ppm PCBs) waste sediments on-site is suspect. One solution is to treat all of the spoils, whether from the areas of 13, 21, 25, 30 or 80 ppm * as hazardous.

*

Some arochlors known to exist in the harbor were not included in the above total PCB figures.

The DEIR indicates that the consultant used data collected by the U.S. Coast Guard (p. 3-7) but fails to present said data. The report also refers to WHOI and Geotechnical sampling results without presenting the data. All data for this particular reach of the harbor being utilized by the PCB task force should be presented in the EIR.

V. Contaminated Sediment Disposal Site

This project, in all alternatives discussed, has to do with PCB and heavy metal contaminated sediments. At the very least, capping of the existing sediments in place is needed. By all other alternatives, some sediments must be dredged from the mud wave or from the embankment foot-print and disposed of properly and safely. The ENF filed for this project indicates 180,000 yards from the perimeter road alignment will be part of the fill material and that COE channel maintenance dredge spoils containing PCBs may be included as fill for the site.

The DEIR concludes that the site "might be suitable"; "may be able to contain"; would need a dike "constructed as a tight containment"; but finally that "this points to continued investigation of the use of the site". Thus, the DEIR left to future documents any firm conclusions as to the use of the site for sediments in the 5 to 49 ppm PCB range as well as the 50 ppm + range.

As the summary concludes. "The present proposed action does not include this (PCB disposal) use."

The DEIR does state, on page 1-1, "This EIR investigates the ability of the proposed project in providing a potential site for disposal of contaminated dredge material. In this regard, it (on page 2-3) indicates that "a continuous 3 ft. blanket of low permeability clay covered with 18 inches of topsoil to support vegetation" is needed over the harbor dredge spoils. However, the ability of this to protect the public while utilizing the site is not addressed.

The report does not indicate whether the standards would differ between special and hazardous wastes, or whether the project would be subject to RCRA or TSCA. It does not discuss compliance with M.G.L. c. 21D or C. 111 sec. 150a

Dredging any sediments on site is projected to release large quantities of PCBs, oils and heavy metals. As such, a siltation curtain and possibly constructing behind bulkheads are suggested. Additionally, if hydraulic dredging is utilized, flocculants and possibly mechanical separation of fine sediments from the water could be required.

Further submittals on this project should identify clearly the levels of contaminants the proposed action will assume present, the parameters necessary to comply with regulation of the action, the parameters necessary if the public is to be encouraged to utilize the site, and any further mitigation measures which might be used to minimize the environmental impact of this project as required by Ch. 30, sec. 61. Estimates of the impact on water quality assume even distribution of resuspended sediments to the entire volume of tidal overturn. Since turbid water is denser than cleaner water, the mixing is retarded and a significant, possibly toxic plume is expected to develop on the ebb tide to impact the biota of the outer harbor.

VI. Flood Storage

The DEIR indicates that some flood storage will be lost by this project but that the amount is not significant. If this were a typical estuary, this probably would be true. However, a hurricane barrier with closing gates has been installed below this site across the estuary. Presumably it would function by closing at low tide prior to the occurrence of threatening storm events. This causes the 100 year storm event to reach only 6 feet within the barrier as opposed to 10 feet plus outside. It also means that fill which displaces existing storage will create a rise in this flood level. Thus, it is important to calculate the tidal prism lost and the storage displaced to elevation 6 feet for the project site and to evaluate the impact of its loss. It may be appropriate to seek compensatory storage under the Wetland Act as is the policy on inland water bodies and floodplains.

VII. Conflicting Proposals

A close look at the plans presented in this DEIR indicate plans for two boat ramps off the proposed embankment area. However, the plans presented for the full development of the site (p. 2-7) show the south ramp converted to a covered seating area and the north ramp no longer in existence. A new ramp (designated rentals) is planned approximately 200 feet farther north. Additionally, a new ramp and associated parking is located south of the fill area on existing land which for some reason was not even included in the area under discussion for the earlier phases of the project.

The need for the embankment to be constructed as a low head dam to contain dredge spoil contaminants is indicated on page 4-6; however, all of the typical embankment cross-sections show the use of select bankfill or ordinary borrow. Page 2.6 notes the need for the structure to prevent groundwater migration off-site.

The bulkhead construction is indicated as a way to do the work essentially in the dry with little water quality impact, yet the next paragraph indicates the need for daily tidal passage unless odors and anoxic conditions are acceptable.

VIII. Mitigation

Several items outlined elsewhere in the DEIR should be added to the section on mitigation. These include:

- (1) the clay capping and vegetative cover from Pg. 4-1.
- (2) the use of cantilevered sheet piles indicated on Pg. 4-8.
- (3) the addition of a traffic lane at each major approach if the sports complex is included from Pg. 4-22.

Additionally, wildlife benefitting shrubs could be utilized in landscaping the site.

IX. Other

The following items should be addressed in the Final EIR.

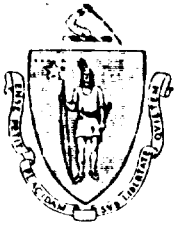
- (1) Were any alternatives considered which would minimize or avoid salt-marsh destruction, especially if the 16 acres might remain vacant?
- (2) Why is it assumed that the Wetlands Act and COE regulations could not stop the illegal filling activities and affect cleanup of the site?
- (3) Is the 74" combined storm/sewer discharge beyond the terminous of Sawyer Street permitted?
- (4) The conclusion that the isolated 13.7 acre inlet (p. 4-8) would become fresh may be valid if no tidal exchange is allowed. However, the Ch. 131, s. 40 action may require the installation of a culvert in order to maintain salinity.
- (5) Would the presence of a PCB disposal site affect area demography (p. 4-16)?
- (6) Have any negative impacts been identified for the sports stadium proposal, such as takings from homes or businesses, which might be necessary to have a functional traffic situation? Page 4-22 indicates LOS of D and E is new lanes are not provided.

Comments received on the Draft EIR are attached and must be addressed in any future Environmental Impact Report for this project.

DATE

Jan. 28, 1983

JAMES S. HOYTE, SECRETARY



Alfred L. Frechette, M.D.
COMMISSIONER

The Commonwealth of Massachusetts
Department of Public Health

600 Washington Street

Boston 02111

Room 770

Tel: 727-2660

OFFICE OF THE ASSISTANT COMMISSIONER
FOR ENVIRONMENTAL HEALTH SERVICES

January 27, 1983

Mr. Samuel Mygatt, Director
M.E.P.A. Unit
100 Cambridge Street
Boston, Massachusetts 02202

Dear Mr. Mygatt:

This letter is to provide you with the comments of the Department of Public Health relative to the New Bedford Waterfront Park Draft Environmental Impact Report. There are a number of issues and questions contained in the scope which are either not addressed or insufficiently addressed in the EIR.

In Section II it states: "The desirability of encouraging increased recreational use of the harbor (which is now closed to lobstering, shell-fishing and fin fishing) should be evaluated. Both short term and long term effects should be considered."

The Department has made numerous efforts (i.e. closing area 1, 2, and 3 to fishing, posting bilingual notices, monitoring PCB levels in lobsters and conducting blood studies) in the past few years to call attention to the serious public health impacts which could occur pursuant to recreational activities in this highly contaminated area. The Department strongly believes that it is highly undesirable to encourage greater recreational use, particularly in the most highly contaminated portion of the harbor (Area 1).

Section IV of the scope raises questions concerning appropriate cover over the contaminated spoils, dust control prior to covering, the safety of public utilization of the site and management of the site before closure.

None of these questions is addressed in the EIR. There is no mention of how the clay cap and topsoil cover will be managed after closure to prevent settling and subsequent development of cracks with release of toxic substances such as PCB's to the air. It has been found that high levels of airborne PCB are present in the ambient air above areas where PCB's have been disposed. The Department has grave concern that over the long term, as settling occurs due to natural forces, this situation could also occur here.

The question of dust control prior to covering is an essential one. It can be expected that there will be substantial amount of airborne emissions of PCB's, heavy metals, and probably other volatile organic compounds during the operations of sediment dredging, drying, transporting and filling of the 16 acre disposal site. These emissions could be from volatilization or from the liberation of contaminated dust particles. The EIR completely ignores the public health impact of this and offers no explanation of how the release of these toxic substances can be avoided during each of the above operations.

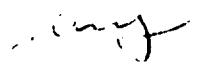
There is no mention of how children playing in the current park will be protected during these activities. How will children be prevented from playing in the highly contaminated cove adjacent to the playground? What public safety measures will be taken to keep them out? These very serious questions raised in the scope are not answered in the EIR.

If there is a possibility that this area will eventually be used for disposal of hazardous waste, the Department would strongly advise against locating any public playground or recreational facility adjacent to the site.

In summary, this draft environmental impact report completely ignores any adverse health effects that might occur during or after construction of the park. The project proposes to dredge and transport large amounts of very toxic materials which may result in airborne dispersal of such over a wide geographical area. Furthermore, the plans for permanently containing this toxic material are so vague that there is no assurance that there will not be continual release of these substances after the park is completed.

If you desire to discuss this in greater detail, please contact this office.

Very truly yours,


GERALD S. PARKER, P.E.
Assistant Commissioner

GSP/lap



ANTHONY D. CORTESE, Sc. D.
Commissioner

The Commonwealth of Massachusetts
Executive Office of Environmental Affairs
Department of Environmental Quality Engineering
Division of Water Pollution Control
One Winter Street, Boston 02108

RECEIVED

January 6, 1983

JAN 18 1983

OFFICE OF THE SECRETARY
OF ENVIRONMENTAL AFFAIRS

Secretary
Executive Office of Environmental
Affairs
100 Cambridge Street
Boston, Massachusetts 02202

Re: EOE A #4340
Draft Environmental Impact Report
Waterfront Park
New Bedford

Attention: MEPA Unit

Dear Secretary

We are pleased to submit the following comments on the Draft Environmental Impact Report (DEIR) for the Waterfront Park perimeter road project, New Bedford.

It is the recommendation of this Division that the Waterfront Park project be incorporated into a master plan for the clean-up of PCB's in the Acushnet River. The present proposal, for EOE A #4340, is basically a design for the perimeter dike road, and not a design for either a waterfront park or dredged material disposal site. Plans should be included in the Final Environmental Impact Report (FEIR) incorporating designs that will prepare the site for accepting PCB contaminated sediments from the Acushnet River. This may include design specifications for a culverted bulkhead to enable an exchange of water between the cove and the river until such time that a clean-up plan is approved.

Additionally, since the cove area may be used for a disposal area in the future, the width of the perimeter road should be minimized in order to maximize space available for disposal volume in the cove, however, not at the sacrifice of structural integrity of the perimeter road. Could the perimeter road (dike) be narrower than presently designed, and shouldn't the proposed parking area and picnic area be deleted from the present design.

Regarding specific information contained in the Draft Environmental Impact Report, we have several comments.

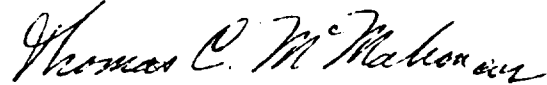
1. Since the bulkhead construction method described in the report is the most benign of those discussed, we recommend that this be the selected alternative. As described, this employs essentially a dry construction method resulting in less water quality impacts.

2. Data relative to PCB concentrations in cove sediments conducted by Jason M. Cortell and Associates, Inc. for the DEIR reveals a range of values from less than 0.005 ppm to 0.259 ppm Aroclor 1242 and 1248. Data derived by the U.S. Coast Guard within the cove reveal a range of 5.0 ppm to 400.00 ppm total PCB. This discrepancy may be partially explained from the fact that the Coast Guard conducted an analysis of total PCB, and the analytical method, or sampling method may have been different. It is unfortunate that a total PCB analysis was not conducted by Jason M. Cortell and Associates, Inc., since it is required in the Standard Application Form, Part II, for water quality certification.
3. The elutriate tests show that PCB's and some metals will be released in the water column above ambient concentrations during dredging and disposal of the material to be dredged. Therefore, a procedure or technique to prohibit discharge of these pollutants above ambient or E.P.A. approved concentrations must be incorporated into the FEIR. A water quality monitoring program that will identify construction impacts also needs to be developed.
4. The discussion that presents the affects of the MASSPORT filling project on water quality is not an appropriate analogy with this project. Since the MASSPORT fill project is being conducted within individual cells, it would be expected that suspended solids at the MASSPORT project will be less than what will occur should the perimeter road be constructed with either an earth embankment or rock mat technique. Open water construction will have greater water quality impacts than would either cellular or bulkhead construction.
5. Will the wetland variance procedure be discussed in the FEIR, as it applies to the destruction of salt marsh? Will the loss of marsh be mitigated?
6. Certain construction techniques have been discussed in the DEIR. Is Jason M. Cortell and Associates, Inc. recommending mechanical dredging with a one cubic yard bucket (page 4-4).
7. The proposed parking area on the cross-section diagrams (pages 2-2, 2-4, 2-5) is shown on the river-side of the roadway, while it is shown on the cove-side in the site plans (pages 3-32, 4-7, and others). What is the proposal?

Secretary
Executive Office of Environmental Affairs
Page 3

Please keep us informed of the progress of this review process.
Questions relative to these comments may be directed to Richard Tomczyk
at 292-5672.

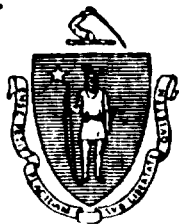
Very truly yours,

A handwritten signature in cursive script, reading "Thomas C. McMahon".

Thomas C. McMahon
Director

TCM/RT/wp

cc: John J. Hannon, Division of Waterways, One Winter Street, Boston 02108



COASTAL ZONE
MANAGEMENT

The Commonwealth of Massachusetts

Executive Office of Environmental Affairs

100 Cambridge Street

Boston, Massachusetts 02202

MEMORANDUM

RECEIVED

JAN 19 1983

OFFICE OF THE SECRETARY OF
ENVIRONMENTAL AFFAIRS

To: Sam Mygatt, Director, MEPA Unit

From: Richard F. Delaney, Director, CZM

Date: 19 January 1983

Re: Draft EIR for New Bedford Waterfront Park Project (EOEA #4340)

The Coastal Zone Management staff has reviewed the Draft EIR for the proposed New Bedford Waterfront Park. We have commented previously (15 March 1982) on the ENF, issues to be discussed in the EIR, and the relationship of CZM policies to the concept of the project.

Our review of the Draft EIR indicates major differences between items required in the MEPA scope of work and what was presented. We feel that several very important aspects of this project were not discussed at all and several more were mentioned in a perfunctory manner. A detailed breakdown of these concerns follows:

1- Item I of the MEPA Scope required that the salt marsh and benthic communities, including shellfish, on the site be mapped and quantified. We feel that this was adequately done. The Scope further required these resources, in the area proposed for filling, and those of an anadromous fish run in the upper harbor, be addressed as entities unto themselves and in their relation to the food chain. The Draft EIR has virtually no discussion of the fish run and almost no discussion of the role of the resources of the area as part of the food chain. There is also no mention of the possibility that the biota in the area may be producing eggs and larvae that are carried out with the tide to develop elsewhere.

2- Under the regulations of several of the Massachusetts environmental laws, when a resource is threatened, means of protection of the values or methods of providing equal protection must be reviewed. Item I of the Scope makes direct reference to this. The Draft EIR however, does not make an evaluation of means of protecting or mitigating the loss of salt marsh or land containing shellfish.

3- Item II of the Scope requires the evaluation of the loss in tidal prism. The Draft contains a calculation of the prism but no significant discussion of the effects of its change on the present channel under the Cogeshall Street Bridge is provided. A 4% change in the prism may have significant impacts on a constricted opening such as this.

4- Item II also requires that a discussion be provided as to the desirability of encouraging increased recreational use of the upper portion of the harbor with all its problems with contamination. This evaluation was not provided.

5- Item III of the scope requires elutriate tests of the sediments proposed for dredging in construction of the perimeter road, and an evaluation of needs to control resuspension of contaminants. The former is provided, but we feel that the discussion of the potential effects of resuspension should be broadened. The Draft EIR notes that the tidal flushing rate, based on areal calculation, is some 18 hours (page 3-11). This figure is not used in the discussion of resuspension (page 4-4). The Draft also reports on samples taken showing PCB levels on the order of .184 and .122 parts per million (page 3-5), apparently uses these samples in the elutriate tests, and implies that levels would be "several orders of magnitude" below significance. On page 3-7 the Draft mentions tests taken in the same general area as that proposed for the perimeter drive that show PCB levels of 80 and 30 parts per million. These results are two orders of magnitude above those used in the elutriate test. There is no discussion of what the ramifications of such higher levels might mean in resuspension. It also should be noted that the EPA "Ambient Water Quality Criteria for PCBs (1980)" discusses effects to aquatic life at parts per trillion, also within the "orders of magnitude" mentioned in the Draft. Obviously in an area such as the Acushnet River estuary, the topic of PCBs needs to be reviewed very carefully.

6- Perhaps the greatest omission in the Draft is the lack of a substantive discussion of the potential of the site as a disposal area for low-level PCB contaminated spoils (less than 50 ppm) as required by item IV of the scope. In our previous comments CZM stressed the need for such a review as a possible means of helping to alleviate the contamination problems in the estuary. In a related issue, there was no review of possible means of disposal of material dredged for the perimeter roadway that might be over the 50 ppm/hazardous waste threshold. Given the 80 ppm levels, mentioned above, that were found near the site, it is possible that this problem will have to be resolved.

7- In a matter of less import, we were confused by the differing locations for boat ramps in various plans. On page 2-7 a plan is presented that shows boat ramps and rentals in locations at the boundaries of the property, while most of the other plans show ramps extending from the perimeter roadway. Are these merely alternative plans, or is there an intent to build ramps in one area and later move them to a different location?

In summary, we find that there are several serious omissions in the Draft, based on the scope defined by the original MEPA certificate. We hope that these will be rectified before the Draft is accepted.